



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

5636 Southern Boulevard
Virginia Beach, VA 23462
www.deq.state.va.us

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT

ISSUED TO

TITAN VIRGINIA READY-MIX LLC

Registration No. VAG110033

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Titan Virginia Ready-Mix LLC, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Regulation" means 9 VAC 25-193-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Ready-Mixed Concrete Plants.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Permit" means VPDES General Permit for Ready-Mixed Concrete Plants No. VAG11, which became effective on October 1, 2003 and expires on September 30, 2008.

SECTION C: Finding of Facts and Conclusions of Law

1. Titan Virginia Ready-Mix LLC ("Titan") owns and operates a ready-mixed concrete plant located at 160 Oceana Boulevard, Virginia Beach, Virginia ("facility"). Titan is subject to the Permit through Registration No. VAG110033, which was issued October 10, 2003 and expires when the Permit expires on September 30, 2008. The Permit authorizes Titan to discharge process wastewater and storm water associated with industrial activities via outfall 001.
2. On November 10, 2004, DEQ Compliance Staff ("Staff") conducted a routine inspection of the facility and documented deficiencies which included: (a) the required one foot minimum freeboard was not maintained as required by the Permit; (b) failure to maintain the required minimum one foot freeboard was not reported to DEQ; (c) the wastewater and storm water generated from waste concrete and dredged solids from the settling basins was not collected for recycle and/or treatment.
3. On December 10, 2004, Staff conducted a follow-up inspection of the facility and observed storm water runoff from an area on the north side of the facility with a slight flow south along the curbing to a vegetative area and subsequently offsite towards Great Neck Creek. Staff conducted a pH analysis of the flow onsite, approximately 125 feet from Great Neck Creek, and documented a pH of 12.3 Standard Units. Additionally, Staff observed a discharge from the concrete settling basins on the south side of the treatment area ultimately discharging off site towards Great Neck Creek. DEQ did not receive the required written report of the unauthorized discharges from Titan.
4. Part I.B.5 of the Permit specifies that any waste concrete and dredged solids from the settling basins shall be managed within a designated area, and any wastewaters, including storm water generated from these activities shall be collected for recycle and/or treated prior to discharge. Titan violated the Permit by failing to collect for recycle and/or treatment, wastewaters including storm water generated from waste concrete and dredged solids from the settling basins.
5. Part I.B.10 of the Permit requires Titan to ensure that all basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a measurable rainfall event. During the 72-hour transition

period, no discharge from the basins and lagoons shall occur unless it is in accordance with the Permit. Within 72 hours after a measurable rainfall event, the freeboard in all basins and lagoons must return to the minimum freeboard of one foot. Should the one foot freeboard not be maintained, the Permittee must immediately notify the DEQ Regional Office, and within five days of notification, the Permittee must submit a written statement to the Regional Office of explanation of noncompliance with the minimum freeboard requirement and corrective measures taken. Titan violated the Permit by failing to maintain the minimum daily freeboard, failing to report to DEQ, non-compliance with the daily freeboard requirements and failing to prevent a discharge of untreated wastewater from the concrete settling basins during a measurable rainfall event as observed during the referenced inspection on December 10, 2004.

6. Part III.F of the Permit prohibits discharges into state waters except in compliance with the Permit. Titan violated the Permit by causing the discharge of untreated wastewater and storm water runoff from the facility to Great Neck Creek which was observed by Staff during a follow-up inspection conducted on December 10, 2004.
7. Part III.G of the Permit requires Titan to report any unauthorized discharges to DEQ immediately upon discovery of the discharge, but in no case later than 24 hours of said discovery. The Permit also requires Titan to provide a written report to DEQ within five days of discovery of the discharge. Titan violated the Permit by failing to submit a written report of unauthorized discharges to DEQ in accordance with the Permit.
8. On December 21, 2004, DEQ issued Notice of Violation ("NOV") W2004-12-T-0003 to Titan, advising Titan of the deficiencies referenced in paragraph two of this Order.
9. On January 7, 2005, DEQ issued NOV W2005-01-T-0001 to Titan, advising Titan of the deficiencies referenced in paragraph three of this Order.
10. On January 20, 2005, and February 4, 2005, DEQ received responses from Titan regarding the NOVs referenced in paragraphs eight and nine of this order. Titan stated that since the issuance of the referenced NOVs it has assigned a new plant manager to the facility and provided training regarding the permit requirements, specifically the freeboard maintenance and reporting requirements. Titan also indicated that new pH adjustment equipment was installed at the facility February 2005, and fully operational as of March 2005, to address the minimum freeboard requirement and storm water runoff from the returned concrete and solids storage area.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders Titan, and Titan agrees to comply with the Permit. In addition, the Board orders Titan, and Titan voluntarily agrees to pay a civil charge of \$4,400 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Titan's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Titan, for good cause shown by Titan, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice(s) of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Titan neither admits nor denies the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Titan declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

5. Failure by Titan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Titan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Titan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Titan shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Titan intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Titan. Notwithstanding the foregoing, Titan agrees to be bound by any compliance date, which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Titan. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Titan from its obligation to comply with any statute, regulation,

Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By its signature below, Titan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12 day of December, 2005.

Francis L. Daniel for
Francis L. Daniel, Tidewater Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

Titan Virginia Ready-Mix LLC voluntarily agrees to the issuance of this Order.

By: John Ware

Date: September 26, 2005

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 26th day of
September, 2005, by John Ware, who is
(name)

Vice President of Titan Virginia Ready-Mix LLC, on behalf of Titan
(title)

Karen K. Britton
Notary Public

My commission expires: 7/31/09